

12/8/09

Honorable Sandra J. Feuerstein
US DISTRICT COURT
CENTRAL ISCP, N.Y.

Re: Capone v. Goldman, et al
09 Civ. 1208 SJF-AKT

Dear Judge Feuerstein:

My name is Mark Goldman. I apologize for this letter & enclosures being handwritten but I am presently incarcerated in the Nassau County Jail and I do not have access to a computer or a working typewriter. I am a defendant in this case.

I am incarcerated as a result of having voluntarily surrendered and acknowledged certain crimes to the US Attorney. My case is presently pending before Judge Wepler.

I was a 50% owner along w/ Mr. Jeff Daniels of a company called Golden, LLC which, although the entity at the crux of both the criminal and civil cases herein is not named as a party defendant.

Golden, LLC is presently in bankruptcy and the case is presently pending before Judge Grossman. It is obvious to me that the only reason Plaintiff has not named Golden in the action before this court is that he and his counsel are forum shopping.

I did not previously file an answer to the complaint as I was advised by counsel, who was discharged, not to do so during the pendency of the criminal action.

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Upon reflection, I now believe this to be poor advice as my silence has allowed the Plaintiff to run roughshod over the truth and to argue certain facts to be true even though they are not supported by the evidence.

Since I have already been deposed by Plaintiff's counsel, I do not believe there is any prejudice to the Plaintiff by permitting me to file the enclosed answer at this time.

In addition to seeking permission to file an answer I ~~wanted~~ respectfully request permission to serve the enclosed third party summons and Complaint upon Mr. Ken Fox. Mr. Fox was the accountant for both the Plaintiff, Capone and all his associated entities as well as the accountant for me, Mr. Daniels, my old law firm, the defendant Goldman & Goldman, Mr. Daniels law firm and my wife & I personally.

I submit that Mr. Fox is intrinsic to this suit and to achieve justice must be a party.

Plaintiff's counsel's strategy is a thinly veiled attempt to jump ahead of the other creditors/lenders of Goldman. To do this he is willing to commit perjury.

Plaintiff's Complaint attempts to assert that he is/was a part owner w/ Goldman of various properties.

I submit and the truth is that Mr. Capone never wanted to be an owner or a partner. He was only looking to lend to our company and to receive a 12% annual interest rate. He also wanted to avoid/defer paying capital gains tax on the property he sold to

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"free up" the cash for the loan.

To accomplish that goal, I agreed w/ Mr. Capone and Mr. Fox to fraudulently undertake a transaction pursuant to USC 1031 (a "like-kind" exchange) to do this Golden was to "sell" various of its properties to Mr. Capone. These Golden properties were deemed the "replacement properties" and completed the 1031 transactions thus allowing Mr. Capone to defer paying capital gain tax & allowing 100% of the proceeds to be loaned to Golden.

In exchange for the loan, Mr. Capone received 12% annual interest & Mr. Fox received additional fees from both sides.

Mr. Capone has suffered severe economic loss and I applaud Mr. Cook (his counsel's) zealous advocacy but to assert there was ever any intent to accomplish anything other than a loan is sheer fiction.

I must also profess I do not know why neither Mr. Daniels nor my wife has implicated Mr. Fox but to not include him as a party herein is improper.

Lastly, I request a hearing for the purpose of having this action dismissed against my soon to be former wife. She was never a party to any of the schemes and has suffered enough. She was never an owner of Golden, had no knowledge of any of the transaction and was another of my victims. Even a review of the complaint clearly shows her only fault was being married to me. While I may have

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identified her as an attorney for one of the party's, I did so without her knowledge and obviously without her approval. Any signature of hers is a forgery by me.

Clearly, Mr. Rock's ~~and~~ inclusion of her was to obtain a part of the sales proceeds from the sale of our marital residence. That has been accomplished and by his actions, my wife only received \$50,000. Mr. Capone extorted \$80,000 from her which the bankruptcy Trustee, Mr. Mendelsohn had otherwise agreed to give her.

Since the house is now gone, the only bases to continue to include her as a party is vengeance & punishment which I submit is not a justifiable basis to ~~include~~ her in this litigation. There is nothing left to take from her. She has no money no job (which is probably why her counsel hasn't made the motion to dismiss) and is about to suffer a total breakdown from my crimes and transgressions.

Since she remains a resident of New York, she is subject to subpoena should Mr. Rock need her testimony at either a deposition or a trial. She is not a proper party defendant to this action.

I therefore request that permission be granted and that my answer to the Complaint be accepted by this court, that I be permitted to serve the 3rd party summons and Complaint and that the action against Andrea Goldman be discontinued w/prejudice.

Thank you. A copy of this letter has been sent to counsel for the Plaintiffs as well as counsel for

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my co-defendants as well as to counsel for the Trustee assigned to the Golden bankruptcy. Again I apologize for the handwritten nature of this application.

Very truly yours
Mark Goldman

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